

Ref: B9/32C

25 February 2011

Mr Allen Ting  
Chief Personal Data Officer  
Office of the Privacy Commissioner for Personal Data  
12/F, 248 Queen's Road East  
Wanchai  
Hong Kong

BY FAX AND BY HAND

Dear Allen,

**The Sharing of Mortgage Data for Credit Assessment – Consultation Document**

I refer to your letter of 22 February 2011.

On your request for information or statistics on the mortgage fraud cases in relation to the provision of false information to credit providers in the past five years, please note that the Hong Kong Monetary Authority (“HKMA”) does not have such information on hand as they are not captured in the statutory returns regularly submitted by authorized institutions (“AIs”). It is also unlikely that AIs would have accurate records of such information as it is difficult if not impossible to discover cases where the mortgage applicants have knowingly provided AIs with incomplete or false mortgage loan information. This is because the applicants are unlikely to admit to providing false information for fear of prosecution and also they do not necessarily borrow from the same bank and it would be difficult for banks to verify the applicant's credit history. Nevertheless, there have been prosecutions in the past. For example, in *Hong Kong Special Administrative Region vs Cheng Po-yan and Cheng Ka-kiu*, the loan applicants failed to make full disclosure of the other mortgages and loans in the application for a personal loan and subsequently caused the bank to incur a loss. The borrowers were ultimately found guilty of the offence of obtaining pecuniary advantage by deception.

In the absence of positive mortgage data sharing, the current arrangement is to rely upon the honesty and correctness of information provided by the loan applicants which obviously has loopholes and there is no way of checking the data accuracy. This is why it is so important to have positive mortgage data sharing and why all major international financial centres in the world have this arrangement in place. In addition, it is important to note that there is no requirement under DPP1(1) that the purpose for which the data is collected has to be substantiated or validated by evidence. DPP(1) places no limit on the purpose for which data may be collected, as long as it is collected for a lawful purpose, which is directly related to a function or activity of the data user.

As to whether properties could generate rental income and hence credit provider's risk exposure in the event of a default is contained, you may wish to note that very few repossessed properties are rented out to generate rental income. It should be recognised that banks are not in the business of managing a portfolio of properties for rental purposes and they would still need to mark to market the losses incurred on repossessed properties even if those properties are rented out. Furthermore, it will certainly take time and effort to rent a property out, in particular during a property market downturn. This option is therefore more theoretical than practical.

It should also be noted that under section 88(1) of the Banking Ordinance, AIs incorporated in Hong Kong are not allowed to hold any interest in land in excess of 25% of their capital base. Repossessed properties will not count for this purpose provided they are disposed of at the earliest opportunity, and in any event not later than 18 months after the repossession. In light of this statutory requirement, there is a strong incentive for banks to ensure that repossessed properties would be disposed of in the market as early as conditions permit. In order to do so, it is not practical for banks to rent out the repossessed properties as it means that the properties will not be as attractive to prospective purchasers who would generally prefer vacant possession. On the other hand, from a tenant's perspective, they expect security of tenure and will generally not be interested in short term leases. Given the above reasons, AIs would be unlikely to rent out repossessed properties with a view to recovering mortgage loan losses through rental income from such properties.

I trust the above is of assistance, in line with the treatment of the HKMA's submissions to you in response to the Consultation exercise, we will post this letter on the HKMA website.

Yours sincerely,

Meena Datwani  
Executive Director (Banking Conduct)

c.c. Policy 21 Limited  
The Chairman, Consumer Credit Forum  
The Chairman, HKAB  
The Chairman, DTCA  
FSTB (Attn: Miss Natalie Li)